

Participants:

**Viatores cum Christo Inc**  
Complainant

- and -

**Department of Consumer and  
Employment Protection**  
Respondent

### **DECISION AND REASONS FOR DECISION**

FREEDOM OF INFORMATION – refusal of access - complaint documents - clause 3(1) - personal information - clause 3(3) - whether information is prescribed details - clause 3(6) - whether disclosure on balance is in the public interest - section 24 - whether practicable to give access to edited documents.

*Freedom of Information Act 1992*: ss. 10(1), 10(2), 21, 24, 45(1), 102(3); Schedule 1, clauses 3(1), 3(6); Glossary

*Associations Incorporation Act 1987*: s.34

*Freedom of Information Regulations 1993*: regulation 9(1)

*Re Morton and City of Stirling* [1994] WAICmr 17

*Kioa v West* [1985] 159 CLR 550 at 585

*McEniery and Medical Board of Queensland* [1994] 1 QAR 349

*Re C and Department for Community Development* [1994] WAICmr 18

*Re Sutcliffe and Victoria Police* (1989) 3 VAR 306

*Police Force of Western Australia v Winterton* (1997) WASC 504

## DECISION

The decision of the agency that Documents 3-8 and the information deleted from Document 1 are exempt under clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992* is confirmed. The information deleted from the first attachment to Document 2 is also exempt under clause 3(1), as are all the other attachments and the letter which comprise Document 2.

D A WOOKEY  
A/INFORMATION COMMISSIONER

29 June 2006

## REASONS FOR DECISION

1. This complaint arises from a decision made by the Department of Consumer and Employment Protection ('the agency') to refuse Viatores cum Christo Inc ('the complainant'), which previously operated under the name of 'Christian Community Incorporated' ('CCI'), access to documents requested by the complainant under the *Freedom of Information Act 1992* ('the FOI Act').

### BACKGROUND

2. CCI was, and the complainant is, an association incorporated under the *Associations Incorporation Act 1987* ('the AI Act') with charitable status. From March 2000 until late 2003, CCI was the subject of complaints to, and investigation by, the agency. However, upon completion of the agency's investigations, the complaints were found to be unsubstantiated.
3. On 24 November 2004, the complainant applied to the agency for access to:  
*"...any and all documents evidencing complaint(s) made against Christian Community Inc (Viatores) from 2000 until the present."*
4. On 13 December 2004, the complainant advised the agency that it agreed to the scope of its application being limited to the documents dealt with in response to a previous application for similar documents. In response to that earlier application the agency had identified 15 documents as within the scope of the access application and refused access to all of them. The complainant sought external review of that decision but withdrew its complaint after being advised of my preliminary view that seven of the documents were outside the scope of the access application and the other eight documents were exempt under clause 5(1)(b) of Schedule 1 to the FOI Act. I understand that the complainant made a new application after clause 5(1)(b) was amended by the Parliament and the nature of the exemption it provided had changed.
5. The agency consulted with certain third parties who objected to the disclosure of the requested documents. On 6 January 2005, the agency, having identified seven documents as within the scope of the access application, decided to give access to edited copies of those documents, deleting only personal information about third parties, pursuant to clause 3(1) of Schedule 1 to the FOI Act. However, the agency advised the complainant that the third parties had the right to request a review of that decision so that access to edited copies of the documents would not be given until the prescribed period for review of the decision had expired.
6. The third parties sought an internal review of the agency's decision to give access to edited documents. On 1 February 2005, the complainant also applied for an internal review of the agency's decision and queried the number of documents identified, on the basis that it differed from the 15 documents dealt with by the agency in the complainant's previous application.

7. On 17 February 2005, the agency provided the complainant with its decision on internal review. The agency advised that it had dealt with only those documents which I had considered to be within the scope of the complainant's previous application, as agreed with the complainant on 13 December 2004. Those documents were:
- “(a) *the information (ie those parts) of Document 1 which were not previously disclosed to you;*
- (b) *that part of Document 6 consisting of “a letter to the agency dated 25 June 2001”; and*
- (c) *the whole of Documents 2, 3, 5, 8, 10 and 11”*
8. On the basis that it was not possible to edit the disputed documents to delete personal information about third parties, the agency's decision-maker advised the complainant as follows:
- “...the facts of this case satisfy the clause 8(2) exemption, and possibly also the clause 3(1) exemption, such that the Documents would not be required to be disclosed, even in edited form, under these exemptions. However, having considered the matter..., I have reached the view that the exemption which most naturally and obviously fits the facts ... of this case is ... clause 5(1)(c) of Schedule 1 to the FOI Act”.*
9. On 1 March 2005, the complainant applied to my office for an external review of the agency's decision to refuse access to the disputed information and documents.

#### **REVIEW BY THE A/INFORMATION COMMISSIONER**

10. Following the receipt of the complainant's application for external review, I required the agency to produce to me the relevant FOI file and the originals of the requested documents. My officers made further inquiries with the agency and the complainant.
11. The complainant advised that it sought internal review because it did not believe that the agency had identified all of the documents within the ambit of its application. The complainant was concerned that relevant documents were missing from the schedule of documents that had previously been identified as falling within the scope of its application. The complainant further advised that it did not consider that the current complaint could be conciliated, given that similar attempts in respect of the previous application had been unsuccessful.
12. In my letter of 21 September 2004, which set out my preliminary view of the complainant's previous complaint, I listed the 15 documents which were then in dispute. I considered that the agency had interpreted the scope of the complainant's access application very broadly. After examining those

documents, it was my view that a number of them revealed nothing about the nature and the substance of the complaints and they were, therefore, outside the scope of the access application. Consequently, I considered that there were eight documents remaining in dispute in that case.

13. In the current matter, the original decision-maker identified seven documents as falling within the scope of the application. However, the internal reviewer considered that the eight documents dealt with in my letter of 21 September 2004 were the documents that fell within the scope of the current application and dealt with the following eight documents in the agency's decision:
1. A letter to the agency dated 3 April 2000, attaching a letter to the agency dated 27 March 2000, with attachments. (In 2000 the agency gave the complainant access under the FOI Act to edited copies of those two letters but not to the attachments. The information in dispute is the matter deleted from the two letters, together with the attachments).
  2. A letter to the agency dated 13 April 2000, with attachments.
  3. A letter to the agency dated 26 June 2000, with attachment.
  4. A letter to the agency dated 28 October 2000, with attachment.
  5. A letter to the agency dated 25 June 2001.
  6. A facsimile to the agency dated 21 July 2003.
  7. A letter to the agency dated 5 September 2003.
  8. A letter to the agency dated 10 October 2003.

Those documents are the documents in dispute in this case.

14. On 28 February 2006, I provided the parties with a letter setting out my preliminary view of this complaint. It was my preliminary view that the disputed information and documents, with one minor exception, were exempt under clause 3(1). It was also my preliminary view, on the information before me at that time, that the disputed information and documents were not exempt under clauses 5(1)(c) and 8(2). In my preliminary view, it was not practicable to give access to edited copies of the disputed information and documents, other than the first attachment to Document 2.
15. Following the receipt of my letter of 28 February 2006, the agency gave the complainant access to an edited copy of the first attachment to Document 2, deleting information on lines 6, 7 and 17 of the attachment as suggested in my letter to the parties. In addition, the agency deleted the facsimile header at the top of Document 2. The facsimile header on that document is also, therefore, disputed information in this complaint. Both the complainant and the agency provided me with further written submissions. In particular, the agency

provided me with detailed submissions in relation to its claim for exemption under clause 5(1)(c).

## **THE EXEMPTIONS CLAIMED**

16. The agency claims that the disputed information and documents are exempt under clauses 3(1), 5(1)(c) and 8(2).

### **Clause 3 - personal information**

17. The agency claims that clause 3(1) applies. Clause 3 provides:

**“3. *Personal information***

***Exemption***

- (1) *Matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead).*

***Limits on exemption***

- (2) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal personal information about the applicant.*
- (3) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who is or has been an officer of an agency, prescribed details relating to -*
- (a) *the person;*
  - (b) *the person’s position or functions as an officer; or*
  - (c) *things done by the person in the course of performing functions as an officer.*
- (4) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who performs, or has performed, services for an agency under a contract for services, prescribed details relating to -*
- (a) *the person;*
  - (b) *the contract; or*
  - (c) *things done by the person in performing services under the contract.*
- (5) *Matter is not exempt matter under subclause (1) if the applicant provides evidence establishing that the individual concerned consents to the disclosure of the matter to the applicant.*

(6) *Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest.*”

18. In the Glossary to the FOI Act, the term ‘personal information’ is defined to mean:

*“...information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead -*

*(a) whose identity is apparent or can reasonably be ascertained from the information or opinion; or*

*(b) who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample.”*

19. The definition of ‘personal information’ makes it clear that any information or opinion about a person, from which that person can be identified, is exempt under clause 3(1).

20. In my view, the purpose of the exemption in clause 3(1) is to protect the privacy of individuals about whom information may be contained in documents held by State and local government agencies.

### **Consideration**

21. I have examined the disputed information and disputed documents and I consider that, if disclosed, they would reveal ‘personal information’ as defined in the Glossary to the FOI Act, about the informants, officers of the agency and other third parties. In my opinion, all the information about those persons contained in the documents is *prima facie* exempt under clause 3(1). However, the exemption in clause 3(1) is subject to a number of limits set out in clauses 3(2) to 3(6) (see paragraph 17 above).

### **Limits on exemption**

#### ***Clause 3(2), (4) and (5)***

22. The limit in clause 3(2) cannot apply in this case because the access applicant is an organisation and not an individual or “natural person”. The definition of “personal information” in the FOI Act makes it clear that the information in question must be about a natural person, that is, an individual. The limit in clause 3(4) does not apply because none of the disputed information and documents would, if disclosed, reveal prescribed details about a person who performs, or has performed, services for an agency under a contract for services. The limit in clause 3(5) does not apply in this instance because the complainant has not provided – either to the agency or to me – evidence that any of the individuals about whom the documents may contain personal information consents to its disclosure. Further, some third parties have

objected to the disclosure of personal information about themselves and, in my opinion, none of the disputed information and documents could be disclosed without revealing the identities of those third parties and, therefore, personal information about them. In my view, therefore, only the limits in clauses 3(3) and 3(6) may apply in this case.

***Clause 3(3) – prescribed details***

23. Documents 2-8 contain personal information from which officers of the agency can be identified, in particular, their names and titles and certain things done by those officers. That information is *prima facie* exempt under clause 3(1).
24. However, in my view, the personal information about those officers which would be revealed by disclosure relates to things done by them in the course of their duties as officers of the agency. Clause 3(3) provides that information is not exempt under clause 3(1) ‘merely’ because its disclosure would reveal certain prescribed details about a person who is or has been an officer of an agency. In my opinion, the use of the term ‘merely’ in clause 3(3), according to its ordinary dictionary meaning, means ‘solely’ or ‘no more than’.
25. The prescribed details are set out in regulation 9(1) of the *Freedom of Information Regulations 1993* (‘the Regulations’) as follows:

*“In relation to a person who is or has been an officer of an agency, details of -*

  - (a) *the person’s name;*
  - (b) *any qualifications held by the person relevant to the person’s position in the agency;*
  - (c) *the position held by the person in the agency;*
  - (d) *the functions and duties of the person, as described in any job description document for the position held by the person; or*
  - (e) *anything done by the person in the course of performing or purporting to perform the person’s functions or duties as an officer as described in any job description document for the position held by the person”.*
26. Having examined Documents 2-8, I consider that the names, titles and other information in those documents concerning officers of the agency all constitute prescribed details because they come within (a), (c), (d) or (e) of regulation 9(1) of the Regulations. I find, therefore, that that information is not exempt under clause 3(1).

*Clause 3(6) - the public interest*

27. Clause 3(6) provides that matter will not be exempt under clause 3(1) if its disclosure would, on balance, be in the public interest.
28. Determining whether or not disclosure would, on balance, be in the public interest involves identifying the relevant competing public interests - those favouring disclosure and those favouring non-disclosure - weighing them against each other and making a judgment as to where the balance lies in the circumstances of the particular case.
29. Pursuant to section 102(3) of the FOI Act, the complainant bears the onus of persuading me that the limit in clause 3(6) applies to the information about the third parties (other than officers of the agency) in Documents 1-8 and that the disclosure of the personal information about those persons, without their consent, would, on balance, be in the public interest.

*The complainant's submissions*

30. The complainant provided me with submissions in its letter of 1 March 2005 seeking external review and in its letter of 20 March 2006, in response to my letter setting out my preliminary view of this complaint. In the latter, the complainant claimed to know the identities of the informants in this matter and provided me with certain information in relation to that claim. However, I cannot confirm, deny, or comment on that claim, in line with my obligations under section 74 of the FOI Act, which prohibits me from disclosing exempt matter. I consider that prohibition to extend to matter that is claimed to be exempt, even if my decision is that it is not. To do otherwise would negate an agency's right of appeal on a question of law, as the very material an agency sought to protect would have already been disclosed.
31. The complainant acknowledges that legislation to protect informants is necessary but comments that such legislation is open to abuse. In the present case, the complainant submits that the agency engaged in an unlawful process over a 5-year period by denying the complainant the right to know the particulars of the complaints alleged against it. The complainant submits that the fact that the substance of the complaints was provided to it does not detract from the fact that the complainant, as the defendant, has the right to know the particulars of the case.
32. The complainant submits that it has a legal right to be provided with the particulars of the allegations made against it "...once DOCEP initiated statutory action whether those particulars reveal personal information about the accusers or not ... Both natural justice and the law demand that the accused know the particulars (not merely the substance) of accusations made ... Once the Department initiated statutory procedures to impose sanctions under the Act as it did here, the law required disclosure under the rules of procedural fairness." The complainant says that, once statutory action has been initiated by the agency, there seems to be a conflict between the right of the accused and exemptions provided by the FOI Act to protect personal

information about the accusers. The complainant submits that the former should take priority over the latter.

33. The complainant submits that it is important to ensure that information held on the agency's file is accurate, not misleading and is up to date, in line with the purposes for which the FOI Act was promulgated. The complainant notes that the purpose of the FOI Act is to enable the public to ensure that personal information in documents is accurate and not misleading and section 45 of the FOI Act gives individuals the right to amend details of personal information contained in a document of the agency if that information about them is inaccurate or misleading.
34. The complainant submits that it is not the intention of the FOI Act to:
  - (1) allow due process to be abused by disregarding natural justice in order to protect the identities of the informants.
  - (2) protect the identities of informants who provide false and malicious data to the agency.
  - (3) allow the agency to refuse to acknowledge its inherently unsound process by hiding behind the identities of the informants.
35. The complainant submits that, if the FOI Act does inadvertently permit such loopholes, it should be amended to make it clear that where, among other things, allegations are repeated over a period of time or found to be demonstrably false, the identities of the informants should be made public as a deterrent to false and malicious allegations, since this would be in the public interest and a matter of natural justice for the victims of those allegations.
36. The complainant submits that the public interest is best served by the disclosure of the particulars of the allegations made against it – whether *verbatim* or in summary form – on the grounds that:
  - The same informants were involved in two separate complaints made against the complainant but on both occasions the complainant was exonerated, which provides a strong legal inference that the informants maliciously provided false information to the agency and disclosure would be a deterrent.
  - Due process should take precedence over confidentiality when there is a conflict between the two and the public interest is served by the agency observing due process by revealing the particulars of its case once it initiates statutory action.
  - Since the agency has followed an illegitimate procedure it could be inferred that – by refusing to give access to the disputed information and documents – the agency is more concerned with covering up procedural unfairness than protecting the names of informants and/or that it has a hidden agenda in keeping this information confidential.

- It is not in the public interest for the agency to waste five years of taxpayers' money on this matter, in which it has, among other things, acted unjustly, made false assumptions and put the complainant to great expense.
- The agency is equating its own interests with the public interest.
- The complainant, its individual members and its Board have the right to ensure that the file held by the agency does not contain false and defamatory particulars about individual members of the complainant.
- Section 10(2) of the FOI Act provides that the reasons the complainant has for wanting the particulars of the agency's action against CCI is not to be a factor in the determination of whether the complainant is given access to them.
- Section 21 of the FOI Act says that, if a document contains personal information about the applicant, the fact that the matter is personal information about the applicant must be considered as a factor in favour of disclosure.
- The public interest would be best served by making those who lodged the complaints about the complainant with the agency and the agency answerable in law.

*The agency's submissions*

37. The agency submits, as follows:

- In the past, the former Information Commissioner ('the former Commissioner') has held that letters of complaint are confidential, citing *Re Morton and City of Stirling* [1994] WAICmr 17, where letters of complaint to a local council were held to be confidential.
- If complainants' identities were disclosed then complainants would be deterred from making complaints to the agency or other government agencies in future and this would hamper the Government's ability to administer various statutes effectively. Since complaints to the agency are voluntary, the agency's capacity to become aware of breaches or possible breaches of the AI Act, among others, is in large measure dependent on members of the public being willing to make complaints. The agency says that this is particularly important since the AI Act provides few mechanisms for the provision of information by incorporated associations to the agency.
- Where the agency pursues proceedings in reliance upon the information provided by an informant, there is a public interest in a defendant having an opportunity to test the validity and veracity of the information in the course of the proceedings and, in this case, that is

what occurred. The agency submits that, in this case, the complainant was properly and adequately informed of the issues under investigation by the agency and that there could be no material detriment to the complainant in any failure by the agency to disclose the precise wording of the complaints made against it.

- The complainant's interest in obtaining the disputed information and documents is a private - and not a public - interest. The agency does not accept the complainant's view that its own interests can be equated with the public interest.
- The agency recognises both a public interest in protecting the identities of the informants and a public interest in the complainant's obtaining information about the contents of the complaints. However, the agency submits that, on balance, the former interest outweighs the latter with the consequence that disclosure would not be in the public interest.
- It is not practicable to edit the disputed matter to delete information that could identify the informants because, even in edited form, it would be possible to ascertain the identities of the informants.

#### *Consideration*

38. The complainant appears to have confused the question of conflict between the right of an accused, the subject of investigation or legal action, and exemptions concerning personal information under the FOI Act. It is not a question of one matter taking precedence over another. If the complainant considered it was denied procedural fairness in the course of the agency's investigations then, as I understand it, there were avenues available to it to have that process reviewed (for example, complaint to the Parliamentary Commissioner for Administrative Investigations (Ombudsman) or judicial review).
39. Under the FOI Act, the question is not what legal rights may or may not arise concerning the procedures involved in an investigation or prosecution. Determining under the FOI Act whether or not disclosure of particular documents would, on balance, be in the public interest is a different question, involving different considerations. It is, as I have explained in paragraph 28 above, an exercise in balancing competing public interests. In that process, recognizing a public interest in a person or body being informed of an allegation made against them to an agency and being given an opportunity to respond to that allegation is recognizing one factor. That factor must be weighed against other competing public interest factors.
40. Each party in this matter sees the other as equating the public interest with its personal interest. However, I consider that there are a number of public interests that are relevant to this matter and which favour either the disclosure or the non-disclosure of the disputed information and documents. Those public interests are set out and considered below.

41. Favours disclosure of the disputed information, I recognise that there is a public interest in persons being able to exercise their rights of access under the FOI Act. I also accept the complainant's submission that its right to be given access is not affected by any reasons it gives for wishing to obtain the particulars of the agency's action against CCI or the agency's belief as to what the complainant's reasons are for wanting that information. That is made clear by section 10(2) of the FOI Act.
42. However, I do not accept the complainant's submission in respect of the application of s.21 in this matter. That section does require that, if the information to which access is sought is personal information about the applicant, that fact must be considered as a factor in favour of disclosure for the purpose of deciding whether it is in the public interest for the matter to be disclosed or the effect that disclosure might have. However, as I have said, the definition of "personal information" in the Glossary to the FOI Act makes it clear that it must be information of the kind described in the definition about an individual. The complainant is not an individual; it is an organisation. Therefore, any information about the complainant contained in the documents cannot be "personal information" as defined and s.21 has no relevance in this matter. If the documents were to contain personal information about an individual member of the complainant – and I make no comment as to whether or not they do – then s.21 would be relevant only if that individual were to apply for personal information about himself or herself. That is not the case here and I have not taken s.21 of the FOI Act into consideration for the purposes of weighing up factors in favour of disclosure.
43. I recognize a particular public interest in people or organisations being informed of complaints or allegations made about them and being given an opportunity to respond to those allegations before any decisions adverse to their interests are made. That is a key requirement of procedural fairness, which agencies are legally obliged to afford in processes such as that undertaken by the agency. However, I consider that public interest to have been largely satisfied by the information concerning the substance of the matters investigated by the agency which the agency has given to the complainant and the discussions and meetings that the agency has had with the complainant concerning those matters.
44. I do not agree with the complainant's claim that procedural fairness and/or the public interest necessarily requires the disclosure of the detail rather than the substance of the complaint, particularly where that is balanced against the public interest in the protection of personal privacy and the identities of informants in certain cases. In this case, I understand that the agency considered that the particulars of the allegations could disclose the identity of the informants and that it was not practicable to provide a summary abstracted from the documents in dispute.
45. I accept the agency's submission that it is not essential to procedural fairness that persons or organisations who have allegations made against them receive those allegations *verbatim*, provided that the substance of those allegations is adequately disclosed. The requirements of procedural fairness are flexible and

vary according to the circumstances of each case: see Mason J in *Kioa v West* [1985] 159 CLR 550 at 585. Ordinarily the duty to act fairly requires that a person be given an opportunity to know the substance of the case made against that person: see *McEniery and Medical Board of Queensland* [1994] 1 QAR 349 at 363. The complainant provided me with no information to establish that either procedural fairness or the law requires that the complainant be given all the details of the allegations made against it. Having examined the agency's files, it appears to me that the complainant was advised by the agency of the general substance of the allegations made against it and the detail of the matters actually investigated, and given the opportunity to respond to them.

46. Having inspected the agency's files in relation to its investigations into CCI, it is apparent to me that not all the particular allegations made in complaints to the agency about CCI were put to CCI by the agency because those matters were not followed up for reasons which I have set out in more detail below. However, it is also clear that, in respect of those allegations, no adverse findings about the CCI were made and no action taken against it. In those circumstances, it does not appear to me that the CCI has been disadvantaged by not having each of those allegations put to it or, therefore, that the public interests identified above weigh significantly in favour of disclosure in this instance. In respect of the matters that were more fully investigated, it appears to me that CCI was informed in some detail of the nature of the matters being investigated.
47. In respect of the points made in paragraph 45 above, of the considerable volume of correspondence between the agency and CCI, I refer in particular to letters dated 17 April and 24 October 2000; 7 June, 9 September, 10 October and 21 November 2002; and 14 January 2003. In the first of those, the agency advised CCI that it had received a complaint about it, specified one of the allegations made in the complaint, referred in general terms to other issues raised and requested the production of copies of specified documents and particular information to enable the agency to investigate those matters. The agency subsequently required CCI to provide it with an audited financial statement for a particular period. In the letter of 24 October 2000, the agency advised CCI that its investigation was concluded on the basis that the auditor's report indicated that the financial affairs of CCI were being conducted in an adequate manner.
48. In the letter of 7 June 2002, the agency advised CCI that it had received another complaint which, among other things, raised concerns about CCI's constitution. The agency advised the complainant that the other matters raised had previously been addressed or were not within its jurisdiction and it is clear from other documents on the files that the agency took no further action in respect of those matters. In that letter, the agency also advised CCI of certain matters relating to the constitution which needed to be addressed.
49. In the letter of 9 September 2002, the agency responded to CCI's proposals in response to the issues raised with it by the agency concerning its constitution. In that letter, the agency also advised that its Legal Services Unit had also recommended that the agency conduct further investigations into a particular

matter, which it specified. In that letter, the agency specified the issues the subject of its investigation and the basis for that investigation. In my view, it is clear from that letter that the investigation from then on was into matters identified by the agency itself as matters of concern, and not into allegations made in the complaints received. In the letter of 1 October 2002, the agency again specified the two issues the subject of its investigation and assured CCI that it would not make a decision in respect of CCI's continued operation without first providing the Board of CCI with the opportunity to make comment and to respond to any allegations that may provide a basis for such action.

50. In the letter of 21 November 2002, in response to a complaint from CCI that the agency refused to particularize the matters the subject of its investigation, the agency once again specified the two issues of its investigation and the basis for investigation of those two issues. In the letter of 14 January 2003, the agency again specified the matters of investigation and enclosed a 7-page document entitled "Issues" listing a number of questions. The agency advised CCI that the document was intended to provide notice of those matters upon which the agency was seeking CCI's response, and the agency invited CCI to attend a meeting to give its views on those issues, if it wished to do so, and also to provide any other information or documentation that CCI considered to be relevant to the matter. That letter and its enclosure appear to me to provide quite detailed information as to the particular issues being investigated by the agency at that time.
51. As it does not appear to me that, at that stage, the agency was investigating allegations made by any informants but, rather, was investigating issues of concern it had itself identified, it does not appear to me that the public interest in a person or organisation being informed of allegations made against it and given an opportunity to respond, before any decision adverse to that person's or organisation's interests is made, does not require the disclosure of the disputed information and documents – being the complaints – in this case. The particular allegations contained in the disputed documents were not, it seems to me, the subject of the agency's investigations and it also appears to me that, in the course of the investigation, CCI was advised by the agency in detail of the matters the agency was investigating. In addition, I do not consider that the disclosure of personal information about the informants and other third parties would add significantly to the complainant's knowledge of the substance of any complaints made against it.
52. Also favouring disclosure, I recognise that there is a public interest in the accountability of agencies for their actions and decisions and in an agency's observance of legislative requirements and due process in its dealings with the public. However, notwithstanding the claims made by the complainant, there is nothing in the information before me to establish that the agency was involved in any abuse of process or denial of procedural fairness and the complainant has provided me with no evidence, other than its assertions, in support of its claims. In addition, if the complainant considers that it has been unfairly or unlawfully dealt with by the agency then, as I understand it, that is a matter that could have been the subject of complaint to the Ombudsman.

The existence of that means of bringing agencies to account is a factor in the balance as it goes some way towards satisfying these public interests without the need for unconditional disclosure (disclosure under the FOI Act is generally considered to be disclosure to the world as no conditions can be attached to the use or further dissemination of documents released under the FOI Act) of personal information about private individuals.

53. I consider there to be a public interest in information about individuals and organisations held by government agencies being accurate, up to date and not misleading. However, I do not consider that the disclosure of the disputed documents and information in this case would further that objective since the allegations outlined in those documents were not substantiated and that fact is recorded in the agency's files. It would not be open to the complainant to rewrite history by changing the allegations made against it.
54. I do not accept the complainant's claim that the complainant, its individual members and its Board have the right to ensure that the agency's file does not contain false and defamatory particulars about individual members of the complainant. As I have explained above, individuals have a right to apply to have personal information about themselves amended if it is inaccurate, incomplete, out of date or misleading. However, it is not open to the complainant – an organisation – to apply for amendment of personal information about individuals, be they members of the organisation or not. Only the individual concerned has the right to do that. Before such an application could be made by an individual, however, an application to access the documents would have to be made.
55. The right provided by the FOI Act to be given access to the documents of an agency (other than an exempt agency) is not an unfettered right. It is subject to and in accordance with the FOI Act which includes the exemption provisions and can involve balancing competing considerations for and against disclosure as illustrated by this decision.
56. I do not accept the complainant's submission that, if the same informants were involved in more than one complaint against the complainant, of which the complainant was exonerated, then there is a strong inference that the informants maliciously provided false information to the agency. The provision of false and/or malicious information is clearly not the only reason why a complaint may be found by investigation to be unsubstantiated. In some cases, an informant will honestly believe in the veracity of the information provided and that it warrants investigation, but will be mistaken in one or both of those beliefs. In others, it will be the case that an informant is not mistaken and the matter does merit investigation but the investigation either results in insufficient evidence to take the matter further or in the evidence gathered either not substantiating or actually disproving the allegations.
57. I agree with the complainant's submission that the disclosure of the identities of the informants would act as a deterrent to people maliciously providing false information to investigative bodies. However, I also accept the agency's submission that it would act as a deterrent to informants with genuine concerns

coming forward for fear of retribution, particularly if their complaints are ultimately not substantiated.

58. That matter was considered by the former Commissioner, in *Re C and Department for Community Development* [1994] WAICmr 18 at paragraphs 55-70, who concluded that it has been accepted in Australia that the public interest in ensuring the free flow of information to investigative and regulatory authorities may well require that a person who knowingly provides false information should be permitted to hide behind the same shield of anonymity as the informer who honestly but mistakenly believes that information concerning a person requires investigation by relevant authorities. I share that view.
59. In that case, the former Commissioner also cited *Re Sutcliff and Victoria Police* (1989) 3 VAR 306 in which the Administrative Appeals Tribunal of Victoria, as it was then, said that the Victorian FOI Act is not concerned with the veracity of the information contained in a document and, therefore, in some instances a malicious person who gave false information to an agency could be protected at the expense of an innocent person. I consider that statement to apply equally to the FOI Act, also.
60. Weighing against disclosure in this instance, I take the view that there is a strong public interest in maintaining personal privacy. That public interest is recognised by the inclusion of the exemption provided by clause 3(1) and, in my view, that public interest may only be displaced by some other, considerably stronger, public interest that requires the disclosure of private information about another person.
61. Also weighing against disclosure is a public interest in the agency maintaining its ability to obtain sufficient information to enable it to discharge its regulatory functions, particularly where it relies upon the provision of voluntary information from the public. To that end, I consider there to be a public interest in maintaining public confidence that people can come forward to the agency with genuine concerns without fear of retribution from the body or persons complained about. I consider that protecting the privacy of persons volunteering information, as far as it is possible to do that, serves that interest.

### *Conclusion*

62. I accept that it is a fine and difficult balance between the public interests in fairness to informants and fairness to those complained about. However, in balancing the competing public interests for and against disclosure as outlined above, I consider that those favouring non-disclosure outweigh those favouring disclosure, in this instance. Therefore, other than the prescribed details about public officers, I find that the disputed information and documents are exempt under clause 3(1) of Schedule 1 to the FOI Act.

## Editing

63. I have also considered whether it would be practicable to provide the complainant with edited copies of the disputed documents from which information identifying the third parties has been deleted.

64. Section 24 of the FOI Act provides:

*“If -*

- (a) the access application requests access to a document containing exempt matter; and*
- (b) it is practicable for the agency to give access to a copy of the document from which the exempt matter has been deleted; and*
- (c) the agency considers (either from the terms of the application or after consultation with the applicant) that the applicant would wish to be given access to an edited copy,*

*the agency has to give access to an edited copy even if the document is the subject of an exemption certificate.”*

65. The application of section 24 was discussed by Scott J in *Police Force of Western Australia v Winterton* (1997) WASC 504 at page 16, as follows:

*“It seems to me that the reference to the word “practicable” is a reference not only to any physical impediment in relation to reproduction but also to the requirement that the editing of the document should be possible in such a way that the document does not lose either its meaning or its context. In that respect, where documents only require editing to the extent that the deletions are of a minor and inconsequential nature and the substance of the document still makes sense and can be read and comprehended in context, the documents should be disclosed. Where that is not possible, however, in my opinion, s.24 should not be used to provide access to documents which have been so substantially altered as to make them either misleading or unintelligible.”*

66. In my view, other than has already been done, it would be not be practicable for the agency to give the complainant access to edited copies of the attachments to Document 1 or to Documents 2-8 because the personal information about the third parties is inextricably intertwined with the remaining matter. I consider that the severe editing which would be required to avoid disclosure of the identities of the third parties would render the documents misleading or unintelligible. Similarly, if they were edited so as to disclose only the prescribed details about public officers, which I have found are not exempt under clause 3(1), the documents would be unintelligible and meaningless.

67. I therefore find that it is not practicable to edit the disputed information and documents.
68. In light of my finding that the disputed information and documents are exempt under clause 3(1), it is unnecessary for me to further consider the agency's claims for exemption under clauses 5(1)(c) or 8(2).

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